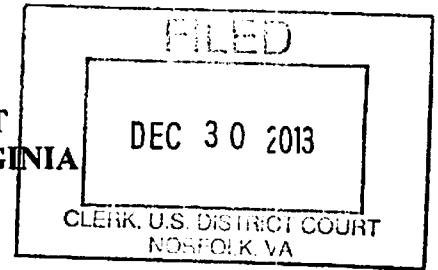


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



DONTE JAMAR GWYNN, #1363175,

Petitioner,

v.

ACTION NO. 2:13cv74

HAROLD W. CLARKE,
Director of the Virginia Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) and an addendum to the petition (ECF No. 2). The Petition and addendum allege a violation of federal rights pertaining to Petitioner's convictions on July 29, 2009, in the Circuit Court for the City of Newport News for second degree murder and use of a firearm. As a result of the convictions, Petitioner was sentenced to serve forty-three years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed November 20, 2013, recommends that Respondent's motion to dismiss be granted and the petition for a writ of habeas corpus be denied as barred by the federal statute of limitations.

On December 2, 2013, the Court received Petitioner's Notice of Appeal indicating

Petitioner's wish to appeal the Report and Recommendation to the United States Court of Appeals. ECF No. 17. As a final judgment has not been entered in this case, the Notice of Appeal was construed as an objection to the Report and Recommendation.

Following a review of the record, the Court does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed November 20, 2013. It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 6) be granted, and the petition for a writ of habeas corpus (ECF No. 1) be DENIED and DISMISSED as barred by the federal statute of limitations. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.



Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
December 30, 2013